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Express Scripts, Inc. & Accredo Health Group, Inc.*

JOHNSON & JOHNSON HEALTH  
CARE SYSTEMS INC.,

Plaintiff,

v.

SAVE ON SP, LLC,  
EXPRESS SCRIPTS, INC., and  
ACCREDITO HEALTH GROUP, INC.,

Defendants.

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

Civil No. 22-2632 (JKS) (CLW)

**DECLARATION OF  
MARK A. BERMAN IN  
SUPPORT OF MOTION TO SEAL**

MARK A. BERMAN, of full age, hereby declares as follows:

1. I am an attorney in good standing of the State of New Jersey and a director of Hartmann Doherty Rosa Berman & Bulbulia LLP, attorneys for Defendants Express Scripts, Inc. (“ESI”) and Accredo Health Group, Inc. (“Accredo”). I submit this Declaration in support of Defendants ESI, Accredo, and Save On SPC LLC (“SaveOn”)’s motion to seal exhibits filed by the parties in connection with Plaintiff Johnson & Johnson Health Care Systems, Inc.’s (“JJHCS”) Motion to Compel Accredo and ESI to Produce Documents Without Redaction (the

“PHI Motion”), dated February 4, 2025, with related briefing dated February 13, 2025 and February 20, 2025 (ECF Nos. 507, 525, 531). ECF No. 525 is ESI and Accredo’s Opposition to JJHCS’s Motion to Compel the Production of Documents Without Redaction (“ESI and Accredo Opposition”) and ECF No. 531 is JJHCS’s Reply in Support of Motion to Compel the Production of Documents Without Redaction by Accredo Health Group, Inc. and Express Scripts, Inc.

2. I make this Declaration based upon my personal knowledge and review of the letters and exhibits.

3. Accredo and ESI seek to seal portions of ECF Nos. 507, 525 & 531 in accordance with Local Civil Rule 5.3(c).

4. Attached hereto as Exhibit A are the proposed public versions of the PHI Motion and related briefing (ECF Nos. 507, 525 & 531). As shown in these exhibits, Accredo and ESI are proposing the redaction of limited information and the sealing of certain exhibits attached to that briefing.

5. Local Civil Rule 5.3(c)(1) requires “[a]ny request by a party ... to file materials under seal, or otherwise restrict public access to, any materials ... shall ordinarily be made on notice, by a single consolidated motion on behalf of all parties ....” The single consolidated motion shall include: “(a) the nature of the materials ... at issue; (b) the legitimate private or public interest which warrant the relief sought; (c) the clearly defined and serious injury that would result if the relief sought is not

granted; (d) why a less restrictive alternative to the relief sought is not available; (e) any prior order sealing the same materials in the pending action; and (f) the identity of any party or nonparty known to be objecting to the sealing request.”

6. In support of this motion, Accredo and ESI have prepared an index, attached hereto as Exhibit B, setting forth the information in the PHI Motion sought to be sealed and the basis for the request.

7. The parties have reviewed each other’s proposed redactions, and no party has objected to the sealing of any of the confidential materials subject to this motion.

8. The Amended Complaint alleges that ESI and Accredo along with SaveOn tortiously interfered with Plaintiff JJHCS’s patient assistance program, CarePath. The Complaint asserts three causes of action against ESI and Accredo: (1) Tortious Interference with Contract; (2) Conspiracy to Tortiously Interfere with Contract; and (3) Aiding and Abetting Tortious Interference with Contract.

9. The parties entered into a Discovery Confidentiality Order, which was so ordered by the Court on November 22, 2022. (ECF No. 62). Upon being named as defendants, ESI and Accredo have indicated their respective consents to be bound to the Discovery Confidentiality Order.

10. The parties have continued to safeguard and protect the confidentiality of these confidential and sensitive materials during the course of this action.

11. ESI and Accredo have an interest in maintaining the confidentiality of the redacted and sealed information contained in several exhibits attached to the PHI Motion and the related briefing, as the documents contain protected health information of patients.

12. Redacted versions of JJHCS's PHI Motion and related briefing (ECF Nos. 507, 525, 531) along with a redacted version of Exhibit 1 Appendix A of ESI and Accredo's Opposition are being filed with this Motion under Local Rule 5.3(c)(4), to ensure that the sealing is by the least restrictive means possible. No redacted version of Exhibits 14, 15, 16, 17, and 18 of JJHCS's PHI Motion (ECF No. 507) are being filed because it is believed that no less restrictive alternative than permanently sealing is available to prevent the disclosure of patients' protected health information.

13. In accordance with Local Civil Rule 5.3(c)(3), attached as Exhibit B is a table documenting all the materials to be sealed, the nature of the materials to be sealed, the legitimate private or public interest which warrants the relief sought, the clearly defined and serious injury that would result if the relief sought is not granted; and why a less restrictive alternative to the relief sought is not available.

14. ESI and Accredo assert that they have a legitimate interest in maintaining the confidentiality of the redacted and sealed information contained in these filings and in avoiding the public disclosure of this information because it

includes patients' protected health information, the disclosure of which would be harmful to patients. *See Rosario v. Doe*, No. CIV. 08-5185 RMB, 2013 WL 3283903, at \*2-3 (D.N.J. June 25, 2013) (Bumb, J.) (sealing records containing private medical information).

15. Accordingly, ESI and Accredo respectfully request that the Court seal Exhibits 14-18 of JJHCS's PHI Motion entirely and redact protected health information in Exhibit 1 Appendix A of ESI's and Accredo's Opposition, ECF No. 525.

16. ESI and Accredo submit that there is no less restrictive alternative available.

17. The parties respectfully submit that they have satisfied the criteria for sealing a judicial record set forth in Local Civil Rule 5.3. Accordingly, they request that the Court grant their joint motion to seal materials.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 6, 2025

/s/ Mark A. Berman  
Mark A. Berman, Esq.